IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/03/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.2505 of 2000

G.Akbar .. Petitioner

-Vs-

1. The Union of India
rep. by the Director General
Railway Protection Force
Indian Railways, New Delhi.

2. The Inspector General-cum-
Chief Security Commissioner
RPF, Southern Railways, Chennai.

3. The Security Commissioner
RPF, Integral Coach Factory
Perambur, Chennai. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.Shafiur Rahman

For Respondents : Mr.V.Suresh Kumar

:ORDER

Pursuant to the disciplinary action initiated against the petitioner, who was working as a Head Constable in the third respondent/ Factory, charging that:
(i) he failed to maintain absolute integrity and devotion to duty at Time Office Gate (Counter No.5) on 8.9.1994 when he failed to prevent stealthy removal of 7 Nos. of , hand shut off valves (brass) with marks "KIM", and allowed an employee of the Railway by name S. Ramalingam, without proper check to go out from the furnishing factory through counter No.5 of the Time Office Gate; and
(ii) that he indulged in corrupt and improper practice by placing himself under pecuniary obligations to another person in a manner as to effect the proper discharge of his lawful and prime duties and failed to maintain

absolute integrity and devotion to duty, violating Rule 146.7 of the Railway Protection Force Rules, 1987 and Rules 3(1)(i), (ii) and (iii) of the Railway Services (Conduct) Rules, 1966,

the petitioner was placed under suspension with effect from 8.9.1994. An Enquiry Officer was appointed, opportunity was given, and the Enquiry Officer found the charges established. The third respondent, based on the findings of the enquiry officer, passed an order of dismissal dated 8.1.1996 and the same was, on appeal, confirmed by the order of the second respondent, which was communicated to the petitioner on 27.9.1996. A further revision to the first respondent also got dismissed by order dated 20.2.1998. Hence, the petitioner has preferred this writ petition for issue of a writ of Certiorarified Mandamus to call for the records in respect of the impugned order of the first respondent dated 20.2.1998 and quash the orders contained therein and as a

consequence, direct the respondents to restore and reinstate the services of the petitioner herein with all benefits accruing from the date of suspension, i.e., 8.9.1994.

2. Mr.Shafiur Rahman, learned counsel for the petitioner assails the impugned order of dismissal dated 20.2.1998 as under:
(i) placing reliance on the decision of this Court in BALIAH DAVID A. Vs. R.M., CENTRAL BANK OF INDIA reported in 2002-I-LLJ 270 it is contended that:
(a) the impugned disciplinary proceedings vitiates due to the appointment of the Enquiry Officer while framing the charge memo itself, as the same amounts to denial of an opportunity to the petitioner to explain his charges preliminarily;
(b) when the petitioner was initially permitted to engage one S.A. Rasheed, as a friend to assist him in the enquiry under Rule 153(8) of the Railways Rules, 1987 from 25.10.1994, the respondents ought to have permitted the petitioner to avail the assistance of S.A.Rasheed during the entire enquiry and the denial of such an opportunity to avail the assistance of a friend during the enquiry by transferring S.A. Rasheed from Integral Coach Factory to Madras Division amounts to violation of principles of natural justice; and
(c) the denial of granting adjournment to cross-examine the department witnesses again amounts to violation of principles of natural justice;
(ii) the finding of the enquiry officer holding both the charges proved is erroneous as there is absolutely no evidence for the same, inasmuch as the enquiry officer purely relied upon the alleged confession statement of one S.Ramalingam, the accused, who was not at all examined before the enquiry officer, and as a result, the petitioner was deprived of an opportunity to cross-examine S.Ramalingam to disprove the alleged confession statement. In this regard, reliance was placed on the decision of the Apex Court in BHAGAT RAM Vs. STATE OF H.P. reported in AIR 1983 SC 454 and contended that as the conclusion of the enquiry officer is based on 'no evidence', the consequential order of dismissal is also liable to be quashed. Furthermore, it is contended that the failure on the part of the disciplinary authority, the appellate authority and the revisional authority to consider that the findings of the enquiry officer are based on 'no evidence' also vitiates the impugned order of dismissal and suffers from nonapplication of mind; and

(iii) the enquiry officer was biased, in the sense that the enquiry officer who was expected to be impartial during the enquiry had put incriminating questions to the petitioner, and the statements to such incriminating questions were relied upon.

3. In reply, Mr.V.Suresh Kumar, learned counsel for the respondents submits that:
(i) the appointment of the enquiry officer along with the framing of charges would not amount to denial of principles of natural justice to make his objections preliminarily to the charge memo, as the petitioner was given all fair and reasonable opportunity of hearing before the enquiry officer;
(ii) inviting attention to the proceedings of the Security Commissioner, Integral Coach Factory, dated 20.4.1995, it was contended that S.A.Rasheed, who was cited as a friend of the petitioner to assist him in the enquiry, was transferred from Integral Coach Factory to the Madras Division, at his own request, but not to deny an opportunity to the petitioner to engage S.A.Rasheed as a friend in the enquiry. Moreover, the petitioner, having stated that he was willing to defend himself during the enquiry on 12.7.1995, could not have any grievance on account of transfer of S.A.Rasheed;
(iii) the mere denial of an adjournment, unless it is blended with malafide, would not amount to an arbitrary exercise of power, particularly when the petitioner unreasonably seeks time to crossexamine the department witnesses;
(iv) the findings of the enquiry officer are based on sufficient materials available on record, viz., the confession statement of S. Ramalingam, the accused, which corroborates with the statement of department witnesses, viz., (a) C.K.Harilal, Assistant Sub Inspector at the same Time Office Gate, Counter No.5; (b) R.Mani, Naik, and (c) R. Ravichandran, and is also supported with the corroborative evidence of independent witnesses, viz., (1) S.Asokan, and (2) S.Parthasarathy; and therefore the evidence of none of the above witnesses could be said as hearsay witnesses, as all of them are eye-witnesses to the incident and two of them are independent witnesses, as referred to above. In view of the corroboration of the evidence of the department witnesses and the independent witnesses with that of the confession statement of S.Ramalingam, the accused, the non-examination of S. Ramalingam, the accused, would not vitiate the disciplinary proceedings;
(v) the allegation that the enquiry officer had put incriminating questions and therefore, the enquiry as well as the findings of the enquiry officer are liable to be held arbitrary and biased is not tenable, inasmuch as the findings of the enquiry officer are purely based on materials available on record; and

(vi) it is contended that the decision of the disciplinary authority based on the findings of the enquiry officer and the further orders of the appellate authority and the revisional authority are purely based on materials available on record and therefore, the contention that the respondents failed to apply their minds is not tenable.

4. I have given careful consideration to the submissions of both sides.

5. It is settled position that in departmental proceedings, the

disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction shall not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities, vide Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759.

6. It is also settled law that in case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct, vide Lalit Popli v. Canara Bank,(2003) 3 SCC 583.

7. With regard to the contention that the impugned disciplinary proceedings vitiates due to the appointment of the Enquiry Officer while framing the charge memo itself, as the same amounts to denial of an opportunity to the petitioner to explain his charges preliminarily, in my considered opinion, the petitioner is not in any way prejudiced by the same, inasmuch as he has been given a fair and reasonable opportunity to make out his defence and participate in the enquiry before the enquiry officer. Once the petitioner fails to establish as to how he was prejudiced by the denial of reasonable opportunity, he cannot complain violation of principles of natural justice, as per the ratio laid down by the Apex Court in STATE BANK OF PATIALA Vs. S.K. SHARMA reported in (1996) 3 SCC 364.

8. The petitioner, who was working in an uniformed force and facing an enquiry, should be prepared to cooperate with the enquiry and the refusal to accommodate the request of the petitioner to adjourn frequently unless it is clamped with malafide cannot be complained as a violation of the principles of natural justice.

9.1. As to the next contention of the learned counsel for the petitioner that the petitioner was deprived of an opportunity to engage S.A.Rasheed, a friend, by transferring him from Integral Coach Factory to Madras Division by proceedings dated 20.4.1995 of the Security Commissioner, it is apposite to refer Rule 153(8) of the Railways Rules, 1987, which reads as under:
"Rule 153: Procedure for imposing major punishments:
(1) to (7) ...
(8) The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance

of any other member of the Force hereinafter referred to as "friend" where in the opinion of the Inquiry Officer may, at the request of the party charged, put his defence properly. Such " friend" must be a serving member of the Force of or below the rank of SubInspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a " friend" in any other proceedings pending anywhere. Such "friend" shall, however, not be allowed to address the Inquiry Officer nor to crossexamine the witnesses."
(emphasis supplied)

9.2. The "division" is defined under Rule 2(i) of the Railways Rules, 1987, which reads as under:
"Rule 2: Definitions:
(a) to (h) ...
(i) "division" means a portion of the railway declared to be a division for security purposes by the Central Government or the Director General."

9.3. It is not in dispute that Integral Coach Factory and the Madras Division are two different divisions. The said S.A.Rasheed, was transferred only at his own request. Merely because S.A.Rasheed initially consented to assist the petitioner in the enquiry, the same, by itself, cannot be a hindrance for him to avail his option for transfer from Integral Coach Factory to Madras Division more so, when his tenure in Integral Coach Factory had expired. Hence, I do not find any malafide in the transfer of S.A.Rasheed from Integral Coach Factory to Madras Division and such a transfer cannot be construed as a denial of opportunity to the petitioner, either violating the principles of natural justice or Rule 153(8) of the Railways Rules, 1987.

9.4. In any event, the petitioner, having stated that he is willing to defend himself during the enquiry on 12.7.1995, cannot have any grievance on account of transfer of S.A.Rasheed; and therefore, the contention of the learned counsel for the petitioner as to the denial of an opportunity to engage S.A.Rasheed to defend the petitioner in the enquiry also fails.

10.1. In the instant case, the respondents relied upon the confession statement of S.Ramalingam, the accused, who had stolen 7 Nos. of , Hand Shut Off Valves (Brass) on 8.9.1994 through the Time Office Gate (counter No.5), where the petitioner was on duty. Concededly, S. Ramalingam, the accused was not examined, but his confession statement was relied upon. The respondent/department examined three department witnesses, viz., (a) C.K.Harilal, Assistant Sub Inspector at the same Time Office Gate, Counter No.5; (b) R.Mani, Naik, and (c) R. Ravichandran, who deposed that the confession statement of S. Ramalingam was not obtained by force or coercion but the same was made voluntarily, which, by itself, substantiates the charges. In addition to the same, the respondent/department had also examined two independent witnesses, viz., (1) S.Asokan, and (2) S.Parthasarathy from whom certain clarifications were also obtained by the enquiry officer, which cannot be construed as if he acted arbitrarily and in an biased manner.

10.2. Of course, the Enquiry officer could have arrived at the

findings without examining S.Ramalingam, but the mere nonexamination of S.Ramalingam, would not, by itself, render the case of the respondent/department as based on 'no evidence', as it is settled law that the adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court.

11. Resultantly, this Court is of the firm opinion that the findings of the enquiry officer are based on sufficient material evidence on record and hence, there cannot be any complaint against the decision taken by the disciplinary authority or the appellate authority or the revisional authority.

For all these reasons, the contentions of the learned counsel for the petitioner fail and this writ petition is, therefore, dismissed. No costs.

Index : Yes
Internet : Yes

sasi

To:

1. The Union of India
rep. by the Director General
Railway Protection Force
Indian Railways, New Delhi.

2. The Inspector General-cum-
Chief Security Commissioner
RPF, Southern Railways, Chennai.

3. The Security Commissioner
RPF, Integral Coach Factory
Perambur, Chennai.